

**SANITIZED DECISION – 06-419 P – BY GEORGE V. PIPER, ALJ – SUBMITTED
for DECISION on OCTOBER 15, 2006 – ISSUED on OCTOBER 26, 2006**

SYNOPSIS

**PERSONAL INCOME TAX – BURDEN OF PROOF MET FOR VACATING
ASSESSMENT** -- Assessment shall be vacated where Petitioners in their petition for reassessment submits documentation from Respondent's own database reflecting the fact that Petitioners' tax payments and credits exceeded the tax assessment for the year in question.

FINAL DECISION

On July 5, 2006, the Accounts Monitoring Unit of the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued a personal income tax assessment against the Petitioners. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the year 2005, for tax of \$, interest, through July 5, 2006, of \$, and additions to tax of \$, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioners as required by law.

Thereafter, by facsimile transmission dated July 19, 2006, the Petitioners timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code §§ 11-10A-8(1) [2002] and 11-10A-9(a)-(b) [2002].

In due course, the presiding administrative law judge contacted the parties and advised them that the matter was to be submitted for decision on documents only, in lieu of holding a hearing in person, because he determined that their appearances in person were not necessary in order to render a decision on the merits.

No specific documentation on the merits was submitted by the required due date; however, this tribunal has issued numerous decisions on the point involved, and we will rule in this case in accordance with prior decisions.

FINDINGS OF FACT

1. In their petition for reassessment, Petitioners stated that they did not owe any of the assessment and attached to the petition a database summary from Respondent reflecting the fact that Petitioners' tax payments and credits actually exceeded the amount of the tax assessment.

DISCUSSION

The only issue is whether the Petitioners have shown that the assessment is erroneous or otherwise invalid.

In this instance, Petitioners submitted documentation from Respondent's own database proving that the tax assessment should be vacated. The Respondent has not specifically contested this specific point.

CONCLUSIONS OF LAW

Based upon all of the above it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon a petitioner-taxpayer, to show that the assessment is incorrect and contrary to law, in whole or in part. *See* W. Va. Code § 11-10A-10(e) [2002] and W. Va. Code St. R. § 121-1-63.1 (Apr. 20, 2003).

2. The Petitioners-taxpayers in this matter have carried the burden of proof with respect to their contention that, based upon the undisputed evidence, no personal income tax liability was due and owing for tax year 2005. *See* W. Va. Code St. R. § 121-1-69.2 (Apr. 20, 2003).

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioners, for the tax year 2005, for tax of \$, interest of \$ and additions to tax of \$, totaling \$, should be and is hereby **VACATED**, and the Petitioners owe no further personal income tax liability for the period in question.